

and decrease the first attachment radius, and (iii) maintaining said first attachment radius at a first radial length responsive to a faster constant rotational speed of the circular wheel, and maintaining said radius at a second, different radial length responsive to a slower constant rotational speed of said circular wheel;

wherein all points on the wheel are confined to rotation on a fixed, circular movement path, and wherein the center of rotation of the wheel remains in a substantially fixed orientation with respect to the adjusting means.

REMARKS

Claims 1-4, 11-14, 19-23, 29-35, 37 and 38 are presented for consideration by the Examiner. The claims have been extensively amended in response to the rejections and remarks in the Office Action mailed December 2, 1998, and every ground of rejection has been addressed.

I. EXAMINER INTERVIEW WAS HELD

A telephone interview was held with the Examiner on April 28, 1999. The Examiner's remarks were helpful in assisting applicant's counsel in focusing on elements the Examiner considers most promising.

The amendments above were made in accordance with the discussion held with the Examiner. In a good faith effort to streamline the prosecution of the above-captioned application at

this stage, applicant has entered the same clarifying aspects discussed with the Examiner to each of the rejected independent claims. It is believed that the application and all claims are thereby in condition for allowance. These amendments are made without prejudice to any future submission of the original claims in a subsequent application.

II. THE OFFICE ACTION SHOULD BE NON-FINAL IF ALLOWANCE OF CLAIM 1 IS NOT GRANTED

As explained more fully below in section IV, claim 1 was already allowable over the Sabin reference, and the language added to claim 1 by this amendment is added for clarification purposes only. Therefore, the present rejection of claim 1 should not have been made final. Claim 1 should either have been allowed, or additional prior art should have been found to support a rejection of claim 1. Applicant therefore submits that claim 1 either be allowed at this point, or the Examiner should provide additional prior art in support of a rejection of claim 1, in which case applicant should be given an additional 6-month statutory period in which to respond.

III. REJECTIONS OF CLAIMS UNDER 35 U.S.C. § 112 ARE TREATED

Regarding the rejection of claim 20 under 35 U.S.C. § 112, second paragraph, the various objections raised are believed to be overcome by amendments made herein which are consistent with said objections. Specifically, the phrase "first rotational force-

transmitting member" in claim 20 has been amended to read "first rotational member," and the phrase "second force-transmitting member" has been deleted from claim 20. The limitation of a cylinder has been added to claim 20, and is supported in the application, *inter alia*, on page 18 at line 1, and in FIG. 2. The limitation "the reference member" in lines 15-16 of claim 20 already has antecedent basis from line 2 of claim 20.

IV. REJECTIONS OF CLAIMS UNDER 35 U.S.C. §§ 102 AND 103 ARE TREATED

Regarding the rejection of the claims under 35 U.S.C. §§ 102 and 103, applicant has carefully studied the reasoning for the rejection provided in the Office Action, together with the several prior art references relied upon. Applicant respectfully submits in good faith that certain rejected aspects of the invention are unanticipated, nonobvious and allowable, for the reasons discussed in the Examiner Interview on April 28, 1999.

A. Claim 1 is Unanticipated and Nonobvious over Sabin

Regarding independent claim 1, it already contained the limitation that the adjusting means maintains the attachment radius at various lengths responsive to various constant rotational speeds of the rotational member, by using the specification to interpret the scope of claim 1 as required by the authority cited below. Claim 1 was therefore already allowable over Sabin for at least that reason, because Sabin operates to modify the attachment radius only temporarily with an increase in speed and then only during the

acceleration phase, as inspection of FIGS. 1-4 (note intervening spring 13) and page 1, line 80 - page 2, line 50, make clear.

More specifically, the adjusting means 10 of Sabin causes the crank pin 9 to slide along the track 29 only when tension in the intervening spring 13 increases (i.e. during acceleration or deceleration), and then returns the crank pin 9 to its original position once the speed becomes a constant velocity, even if that velocity has increased or decreased from a previous velocity. The spring 13 resides in the same state of tension when the rotational speed is constant, regardless of the speed of the wind wheel 11. Therefore, an acceleration (such as may occur by a gust of wind against the wind wheel 11) will produce tension in the spring 13 which then causes the threaded adjusting means 10 to move the crank pin 9 along the track 29--but when the acceleration subsides the spring 13 will return to its original state of tension and thereby operate the adjusting means 10 to pull the crank pin 9 back into its original position, even though the wind wheel 11 is now turning at a faster velocity. Claim 1 is therefore allowable, because Sabin teaches away from the concept of maintaining a changed attachment radius at an increased but constant speed (i.e. after the acceleration phase is over), and the Sabin device is in fact incapable of accomplishing this element of claim 1. Claim 1 is therefore allowable over Sabin.

In short, when the velocity of wind wheel 11 is constant, the spring 13 resides in the same state of tension and the attachment radius (distance between the crank pin 9 and the axis of rotation)

is the same for all speeds, in claim contrast with claim 1. The spring 13 and the threaded adjusting means 10 simply act as a type of shock absorber during periods of acceleration or deceleration, but they are incapable of maintaining an increased or a decreased attachment radius responsive to different constant velocities. It is only during the "increase of wind velocity" (page 2 at line 42), i.e. only during the acceleration/deceleration phase, that the attachment radius defined by the position of crank pin 9 is any different than the original radial length. The Sabin device is incapable of keeping the crank pin 9 at an increased radial length position for a higher constant velocity because the spring 13 resides in the same state of tension for all speeds and will thereby hold the crank pin 9 in the same location within the track 29.

For the above reasons, Sabin fails to teach or suggest the concept of an adjusting means as defined in claim 1, that is capable of maintaining the attachment radius at various lengths responsive to various constant rotational speeds of the rotational member. Since the Sabin device fails to maintain an increased attachment radius for one constant speed and a decreased attachment radius for another constant speed, and is in fact incapable of this and therefore teaches away from claim 1, it would be unfair to use this reference as a basis for rejecting claim 1. One of ordinary skill could not have utilized the Sabin reference to achieve the invention defined in claim 1. Claim 1 is therefore believed to be allowable, and the same is respectfully requested.

B. The Language Added to Claim 1 is for Clarification Purposes and Does Not Raise New Issues

The language added to claim 1 by this amendment is added for clarification purposes. The language of claim 1 as constituted prior to this amendment already included the concept of maintaining the attachment radius at various lengths responsive to various constant rotational speeds of the rotational member, for the following reasons.

It is axiomatic that an element in a patent claim will be interpreted by using the specification for the interpretation. "It is entirely proper to use the specification to interpret what the Patentee meant by a word or phrase in the claim." Du Pont v. Phillips Petroleum Co., 7 U.S.P.Q.2c 1129, 1131 (Fed. Cir. 1988) (citing authority). Although an extraneous limitation appearing in the claim cannot be deemed present in the claim if that limitation exists "wholly apart" from the existing claim limitations, Id., this is not the situation at issue because the clarifying language added to claim 1 by this amendment does not touch upon concepts that are "wholly apart" from the pre-existing elements of claim 1. The language of claim 1, prior to this amendment, defined the limitation of an adjusting means for varying the radial attachment point responsive to rotational speed and to increase and decrease the radius in accordance with the speed (i.e. not acceleration) depending on what that speed is. In order to interpret more fully what that limitation is, one would look to the specification, particularly to page 16, line 22 - page 17, line 20. The aspect of

"constant rotational velocity" is mentioned on page 17, line 4, as is the concept of a "ratio of movement," concepts which, along with the rest of that section of the specification and the information one of ordinary skill may gain by inspecting FIGS. 1-4, make clear that the intended meaning of "varying a location of the first radial attachment point responsive to rotational speed...to thereby increase and decrease the...radius" invokes the concept that the radius maintained for a first constant speed will differ from the radius maintained at a second constant speed. This concept is therefore included in the limitation previously existing within claim 1, and it is therefore not "wholly apart" and thus should be deemed to not raise new issues.

Applicant notes further that:

[w]here there is an equal choice between a broader and a narrower meaning of a claim, and there is an enabling disclosure that indicates that the applicant is at least entitled to a claim having the narrower meaning, we consider the notice function of the claim to be best served by adopting the narrower meaning.

Athletic Alternatives Inc. v. Prince Mfg. Inc., 37 U.S.P.Q.2d 1365, 1372 (Fed. Cir. 1996).

It was therefore incumbent on the Patent Office to interpret claim 1 as constituted prior to this amendment to be narrowly construed in the manner described above, to include the concepts now clarified by this amendment. Claim 1 as it existed prior to this amendment should not be interpreted so broadly as to cover the

concept of any increase or decrease in the attachment radius, without further limitation, because that version of claim 1 clearly made reference to the concept of an adjustment responsive to rotational speed. When the specification is consulted, it is clear that the radius is maintained at a larger length during a first constant velocity, and at a shorter length during a second constant velocity. The authority above compels the Patent Office to construe claim 1 in the narrower manner. These limitations were thus present in claim 1 prior to this amendment under the above authority, and they operate to render claim 1 allowable over the Sabin reference.

Since the limitations that distinguish claim 1 from Sabin were already present in claim 1 as interpreted by the specification in accordance with the binding authority cited above, the differences pointed out herein between claim 1 and Sabin do not raise new issues.

C. Claims 32, 35, 37 and 38 are Allowable for the Reasons Given in Support of Claim 1

The clarifying language added to claim 1 has also been added to each of the independent claims 32, 35, 37 and 38. Those claims are therefore allowable for the reasons given above in support of claim 1.

D. Claims 11-12 Were Already Rewritten to Include the Limitations of the Base Claim, and Should Therefore be Allowed Without Further Amendment

Claims 11 and 12 were indicated as being allowable if rewritten to include the limitations of the base claim, but were objected to as being dependent upon a rejected base claim. This same statement was made in the previous Office Action, and applicant has already amended claim 11 in Amendment A filed previously to include the limitations of claim 1 (there were no intervening claims). The objection thus appears to have been repeated through oversight, and applicant respectfully submits that claims 11-12 are allowable and the same is respectfully requested.

All dependent claims depend either from an allowed independent claim, or from an independent claim that is allowable for reasons explained above, and are therefore believed to be allowable.

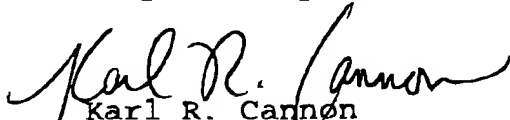
V. CONCLUSION AND AUTHORIZATION OF DEPOSIT ACCOUNT

In view of the foregoing, applicant believes that claims 1-4, 11-14, 19-23, 29-35, 37 and 38 are all allowable and the same is respectfully requested. If any impediment to the allowance of these claims remains after entry of this Amendment, and such impediment could be alleviated during a telephone interview, the Examiner is invited to initiate the same.

The Commissioner is hereby authorized to charge any additional fee or to credit any overpayment in connection with this Amendment to Deposit Account No. 50-0836.

DATED this 3rd day of May, 1999.

Respectfully submitted,


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